



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF AT NAIROBI

CAUSE NO. 362 OF 2013

**KENYA UNION OF COMMERCIAL,
FOOD AND ALLIED WORKERS.....CLAIMANT**

VERSUS

PAT AUTO SPARES LTD.....RESPONDENT

AWARD

(Rule 27(1) (a) of the Industrial Court (Procedure) Rules 2010)

1. The Claimant filed its Memorandum of Claim on the 19th March, 2013. It prays for the following orders against the Respondent:-

- a) The Respondent to execute a Recognition Agreement with the Claimant,
- b) The Respondent to deduct and remit to the Claimant Trade Union dues with regard to all Members of the Claimant,
- c) The Respondent is restrained from victimizing Claimant's Members on account of their association with the Union,
- d) The Respondent to negotiate a CBA with the Claimant Union within 30 days of executing the Recognition Agreement,
- e) Costs to the Claimant.

2. The Respondent did not file anything in response to the Claim. Hearing was scheduled by the Court, for 21st April, 2016. Notices were served on both Parties, but the Respondent did not attend Court on the hearing date.

3. Mr. Owiyo for the Claimant told the Court that his Union, represents Unionisable Employees in the Commercial Sector. The Respondent Company operates an Autospares shop. It is a business activity falling within the Claimant's area of representation.

4. Between 23rd March, 2011 and 1st April, 2011, the Claimant recruited all the 7 Unionisable Employees working for the Respondent. This was more than the simple majority requirement under the Labour Relations Act 2007.

5. The Claimant subsequently forwarded the Check-Off Lists and Model Recognition Agreement to the

Respondent. The Claimant arranged to meet the Respondent to execute the Recognition Agreement. The Respondent denied the Claimant access to the Respondent's work premises. The Respondent did not sign the draft forwarded by the Claimant or in any way, act on the requests made by Claimant.

6. The Claimant made a formal report of the existence of a trade dispute to the Minister for Labour. A Conciliator was appointed. Conciliation meetings were convened. The Respondent ignored all the meetings. The Conciliator therefore advised the Claimant to escalate the dispute for adjudication before the Court.

The Court Finds:-

7. The Claim is undefended. The Claimant has satisfactorily shown it is the relevant Union to represent the Unionisable Employees, working for the Respondent. The Respondent is engaged in a commercial activity which falls within the areas of representation delineated in the Claimant's Constitution.

8. It is not disputed the Claimant recruited all of the 7 Employees at the Respondent's business. Recruitment was 100%, while the Labour Relations Act 2007, only requires the Union to have a simple majority.

9. Lastly, there is no other Union, claiming to represent the same collective bargaining unit. The Claimant has met all the requirements of the law, in particular Section 54 of the Labour Relations Act. Grant of recognition is deserved. IT IS ORDERED:-

- a) The Respondent shall, within 30 days of the delivery of this Award, sign Recognition Agreement with the Claimant Union.
- b) Within 60 days of executing the Recognition Agreement, Parties shall negotiate, conclude and register a CBA.
- c) The Respondent is hereby restrained from victimizing any of its Employees on account of their association with the Union.
- d) The Respondent shall deduct and remit trade union dues to the Claimant, with effect from the date of this Award.
- e) Costs of this Claim assessed at Kshs.15,000 granted to the Claimant Union.

Dated and delivered at Nairobi this 22nd day of April, 2016.

James Rika

Judge